

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0186P**

**Sales and Use Tax  
For Tax Years 2000 and 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration—Negligence Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a clothing retailer. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments of use taxes for 2000 and 2001. Taxpayer paid the assessments, but protested the imposition of a ten percent negligence penalty. Further facts will be provided as necessary.

**I. Tax Administration—Negligence Penalty**

**DISCUSSION**

Taxpayer protests the imposition of a ten percent negligence penalty on assessments for tax years 2000 and 2001. The Department imposed the negligence penalty due to underpayment of use tax for the two years in question, as provided in IC 6-8.1-10-2.1.

Taxpayer paid the assessments, but did not pay the penalty amounts. Taxpayer states in its protest that it paid use tax consistently and timely during the audit period and was unaware that any use tax had been omitted. Also, taxpayer explained that it has taken steps to improve its tax collection and payment in the future. The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Taxpayer is an established business, and should have had adequate tax payment procedures in place. Taxpayer has not affirmatively established that failure to pay the full amount of tax due for 2000 and 2001 was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

### **FINDING**

Taxpayer's protest is denied.

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